

Application No.: 09/843,145Docket No.: 30014343 US (1509-179)**REMARKS**

The Abstract has been rewritten so some of it includes features of the claims presented in accordance with the present amendment.

Claims 6, 15-19 and 23 have been canceled and rewritten as new claims 27-31. In addition, revisions have been made to claims 1, 8-10, 12, 14 and 22 for clarity and to omit certain requirements and to add certain requirements.

Claim 1, as amended, is deemed patentable over the art of record, particularly over Rautila et al. (U.S. Patent 6,549,625), the reference primarily relied on in the Office Action. Claim 1 distinguishes over the art of record by requiring the step of changing the reply message, i.e., the message sent by the consumer device to the advertiser device, at the broker device and communicating the changed reply message from the broker device to the advertiser device. New claim 27 indicates the change to the reply message includes augmenting the reply message, while new claim 28 indicates the change to the reply message includes modifying original text of the reply message. New claim 29 indicates the original text is modified by removing an identifier of the consumer, while new claim 31 indicates the broker device changes the message sent by the consumer device by augmenting the message sent by the consumer device to enable modification of any follow-up message sent by the advertiser device to the consumer device. New claim 30 includes the limitation formerly included in claim 1 that the broker device is interposed in a telecommunications link between the advertiser device and the consumer device.

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The discussion in the Office Action about claim 6 and other claims seems to imply that the Examiner is of the opinion that Rautila et al. discloses the newly added feature of claim 1. This discussion in the Office Action concerns the paragraph in Rautila et al. beginning in column 6, line 48 and ending in column 7, line 10. The disclosure in this paragraph of Rautila et al. is, however, very difficult to follow. Applicants will attempt to interpret this paragraph, particularly as the claims are interpreted in the Office Action. The Office Action considers mobile terminal 12 of Rautila et al. as Applicants' consumer device, short range position transceiver 14 at location 16 to be Applicants' advertiser device and the database 26 of the Internet Protocol (IP) network of Rautila et al. to be Applicants' broker device.

Applicants construe the foregoing paragraph of Rautila et al. such that the sentence reading "The information which is broadcast by the link 24 is diverse in nature and includes identification information" to mean that identification information, *inter alia*, is broadcast from short range position transceiver 14 (which the Examiner considers to be Applicants' advertiser device) and mobile device 12 (which the Examiner considers to be Applicants' consumer device). The information which is broadcast from transceiver 14 (Applicants' advertiser device) to mobile terminal 12 (Applicants' consumer device) includes advertisements (column 6, lines 50-51). The information transmitted from transceiver 14 (Applicants' advertiser device) to mobile terminal 12 (Applicants' consumer device) includes information relating to services which are close to broadcast location 16 where short range position transceiver 14 (Applicants' advertiser device) is located (column 6, lines 59-61). The information about the

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services which are close to broadcast location 16 that includes transceiver 14 (Applicants' advertiser device) and mobile terminal 12 (Applicants' consumer device) occurs after communication of the mobile terminal 12 (Applicants' consumer device) with database 26 (Applicants' broker device) within the IP network. The services 25 which are close to broadcast location 16 including transceiver 14 (Applicants' advertiser device) include printing a document by the closest available printer or other information informing a user of the special services available only at the location of position transceiver 14 (Applicants' advertiser device) (column 6, line 60 and lines 64-67). The advertisement information which is broadcast by position transceiver 14 (Applicants' advertiser device) (column 6, lines 50 and 51) includes the price of goods or services and a requested form of payment indication, resulting from a user using mobile terminal 12 (Applicants' consumer device) to send the requested form of payment to database 26 (Applicants' broker device) (column 7, lines 1-3). The requested form of payment is transmitted from mobile terminal 12 (Applicants' consumer device) to database 26 (Applicants' broker device) using a short message system format and link 27 from database 26 (Applicants' broker device) to position transmitter 14 (Applicants' advertiser device) (column 7, lines 4-7). Link 27 is a long distance link, as indicated by Figure 1, since link 27 is from position 16 to database 26 of the IP network; database 26 is outside broadcast area 18. Position transmitter 14 (Applicants' advertiser device) transmits an acknowledgement 27' of payment to the user of mobile terminal 12 (Applicants' consumer device) (column 7, lines 7-9). Figure 1 indicates link 27' is within broadcast area 18.

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Rautila et al. also says position transmitter 14 (Applicants' advertiser device) also transmits "access 27" location based device or specialized service 25 or to machine 27" providing the purchased goods receiver" (column 7, lines 7 and 9-11) Frankly, Applicants are not able to understand the immediately preceding quote, and notes that Figure 1 includes two reference numerals 27". One of the reference numerals 27" represents a link from location 16 where transceiver 14 (Applicants' advertiser device) is located to location based device for specialized service 25. The second reference numeral 27" represents a link from a location 16 to vending machine 27". In any event, the portion of Rautila et al. in column 7, lines 9-11, does not appear to be germane to Applicants' claims.

Based on the foregoing, Applicants are unable to agree with the statement in the fourth full paragraph on page 3 of the Office Action that says:

Rautila teaches a method according to claim 1 in which the broker device modifies the message sent by the consumer device to the advertiser device, or modifies any follow-up message sent by the advertiser device, or a proxy or master advertising device, to the consumer device (Col. 6, line 60 through Col. 7, line 10).

Based on the foregoing discussion of this portion of Rautila et al., the statement in the Office Action appears to be erroneous. The Examiner is requested to specifically indicate how he interprets the aforementioned portion of Rautila et al. to include the modification feature.

In rejecting claim 4, the Examiner states that Rautila discloses broadcasting an advertisement from short range position transceiver 14 at broadcast location 16. The Examiner appears to rely on Figure 1 for such a disclosure. However, transceiver 14 is

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illustrated in Figure 1 merely as a box at location 16. The Examiner is requested to indicate where there is a disclosure in Rautila et al. that transceiver 14 meets the requirements of claim 4.

In discussing claim 5, the Office Action states transceiver 14 of Rautila et al. is a hand-holdable portable device. As indicated in connection with the discussion of claim 4, there does not appear to be a basis for this statement and the Examiner is requested to provide information from the Rautila et al. reference of the claim 5 feature.

The Office Action, in discussing claim 7, states that Rautila et al. transceiver 14 does not include its own telecommunication address in advertisements the transceiver broadcast. However, column 6, lines 40-50, states that information is transmitted via link 24 between transceiver 14 at location 16 and mobile terminal 12 and that this information includes identification information. The Examiner is again requested to indicate the portion of Rautila et al. that specifically states there is no transmission of the address of transceiver 14.

The Office Action, in discussing claims 12 and 13, states that Rautila et al., in column 6, line 60 through column 7, line 18, discloses sending a first part of an advertisement via a short range telecommunications link, i.e., the link between transceiver 14 and mobile device 12, and sending a second, longer or larger part of the advertisement via that link, wherein the second part of the advertisement is transmitted after the mobile device 12 has screened the first part of the advertisement, as sent to it from transceiver 14, and communicated with database 26 (which the Examiner construes to be the broker device). Applicants are unable to understand the basis for the Examiner's position in this

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regard. The Examiner is therefore requested to explain, in detail, how Rautila et al. discloses the foregoing operations.

In rejecting claims 20-25 in the paragraph bridging pages 4 and 5 of the Office Action, no consideration is given to the requirement of independent 20 for the server being adapted to modify the receive message so as to ensure, at least initially, that no telecommunications address of an advertiser or replier to an advertiser is passed with the message that is transmitted by the server. Further, the rejection of claim 23 fails to consider the requirement of claim 23, now incorporated into claim 22, for the broker device being adapted to pass advertiser details to the consumer device, consumer details to the advertiser device, or both, in response to triggering of a details-release trigger. Based on the foregoing, the rejections of claim 20 and former claim 23 as set forth in the Office Action are incorrect.

Perhaps, the Examiner is relying on inherency in making many of the foregoing statements. If so, the Examiner is reminded of the law with regard to inherency. The fact that a certain result or characteristic *may* occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993); *In re Oelrich*, 666 F.2d 578, 581-82, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981). To establish inherency, extrinsic evidence must make clear that the missing descriptive matter is *necessarily* present in the thing described in the reference and that it would be so recognized by persons of ordinary skill in the art. Inherency may not be established by possibilities or probabilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *In re Roberston*, 169 F.3d 743, 745, 49 U.S.P.Q.2d

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1949, 1950-51 (Fed. Cir. 1999). In relying upon a theory of inherency, the Examiner must provide a basis in fact or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the prior art. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (B.P.A.I. 1990). In the present case, the Examiner has made no attempt to provide evidence or rationale to support the various statements set forth in the Office Action, that are not specifically supported by Rautila et al.

With regard to the rejection of claims 9 and 10 as being obvious as a result of Rautila et al. in view of Slettengeren et al. (U.S. Patent Publication 2002/0028674), Applicants note that the foregoing features of claim 1, upon which claims 9 and 10 depend, are not found in Slettengeren et al. Consequently, claims 9 and 10 are allowable with claim 1, upon which claims 9 and 10 depend.

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In view of the foregoing amendments and remarks, favorable reconsideration and allowance are respectfully requested and deemed in order.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 08-2025 and please credit any excess fees to such deposit account.

Respectfully submitted,

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